

Electronically Filed  
7/24/2014 5:07:22 PM  
Hidalgo County District Clerks  
Reviewed By: Priscilla Rivas

C-6423-14-G

CAUSE NO. \_\_\_\_\_

<b>MATHEW TAMEZ</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
	§	
	§	
	§	
<b>v.</b>	§	<b>_____ JUDICIAL DISTRICT</b>
	§	
<b>LUIS E. GARCIA HERNANDEZ,</b>	§	
<b>individually and d/b/a GARDEZ</b>	§	
<b>BROTHERS TRUCKING AND</b>	§	
<b>GABRIEL LOPEZ COLIN</b>	§	<b>HIDALGO COUNTY, TEXAS</b>

**PLAINTIFF'S FIRST ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW **Mathew Tamez**, Plaintiff herein, complaining of Defendant **Luis E. Garcia Hernandez**, individually, and d/b/a **Gardez Brothers Trucking** and of **Gabriel Lopez Colin**, and for cause of action would respectfully show the Court as follows:

**I.**

Plaintiff is an individual residing in Texas.

**II.**

Defendant **Luis E. Garcia Hernandez**, individually, and d/b/a **Gardez Brothers Trucking**, is an individual residing in California.

Said Defendant has purposefully availed itself of the privileges and benefits of conducting business in Texas and has conducted business within the state of Texas, committed a tort in whole or in part in Texas and/or recruited Texas residents, directly or through an intermediary located in Texas for employment inside or outside the state of Texas.

Said defendant does not maintain a regular place of business in Texas and there is no designated agent upon whom service may be made in Texas.

Said Defendant may be served with process herein by serving: **Luis E. Garcia Hernandez**, individually, and d/b/a **Gardez Brothers Trucking**, at: 17103 Cerritos Street, Fontana, San Bernardino County, California 92336, by serving the Texas Secretary of State who

C-6423-14-G

is requested to serve: **Luis E. Garcia Hernandez, individually, and d/b/a Gardez Brothers Trucking**, via registered mail or by certified mail, return receipt requested with citation for: **Luis E. Garcia Hernandez, individually, and d/b/a Gardez Brothers Trucking**, at 17103 Cerritos Street, Fontana, San Bernardino County, California 92336.

Defendant, **Gabriel Lopez Colin**, (909-275-8565) is an individual residing in California. Said Defendant has committed a tort while operating a motor vehicle in the state of Texas as per Sec. 17.042 of the Texas Civil Practice & Remedies Code. Said Defendant may be served with process herein by serving Defendant at his place of residence and/or at his principal place of business by serving the Chairman of the Texas Transportation Commission with a certified copy of process who in turn will serve Defendant by properly addressed registered mail, or certified mail, return receipt requested, letter to Defendant at his place of residence, and/or at his principal place of business at 16405 Upland Ave., Fontana, San Bernardino County California 92335, in accordance with Sec. 17.063 of the Texas Civil Practice & Remedies Code.

### III.

Venue is proper in Hidalgo County, Texas pursuant to V.T.C.A., Civil Practice & Remedies Code, Section 15.002 in that all or a substantial part of Plaintiff's cause of action accrued in Hidalgo County, Texas.

Venue is further proper in Hidalgo County, Texas pursuant to V.T.C.A., Civil Practice & Remedies Code, Section 15.005, in that the Court having proper venue over one Defendant herein, the Court has proper venue over all Defendants herein, in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

### IV.

On or about September 26, 2013, Plaintiff **Mathew Tamez** was stopped east-bound in a parking lot in the 1400 block of E. Ridge Rd., in McAllen, Hidalgo County, Texas, in a safe and prudent manner.

At that time and place, a 2009 Kenworth tractor and trailer, (Cal. Lic.#WP12275), owned by Defendant **Luis E. Garcia Hernandez, individually, and d/b/a Gardez Brothers Trucking**, and operated by Defendant **Gabriel Lopez Colin**, in the course of his employment with Defendant **Luis E. Garcia Hernandez, individually, and d/b/a Gardez Brothers Trucking**,

**C-6423-14-G**

traveling southbound in the 2000 block of S. Jackson, in McAllen, Texas, turned right improperly and crashed into the stopped vehicle operated by **Mathew Tamez**.

As a result of the collision in question, Plaintiff suffered and sustained injuries and damages for which he hereby sues.

**V.**

Defendants were guilty of acts of omission and commission constituting negligence, negligent entrustment and negligence per se, including but not limited to violations of the Texas Transportation Code.

**VI.**

Plaintiff would further show that as a direct and proximate result of the negligent acts of omission and/or commission of the Defendants, the injuries and damages sustained by Plaintiff include, the following:

1. Reduced earning capacity, occurring in the past and continuing, in reasonable probability, into the future;
2. Physical impairment in the past and continuing, in all reasonable probability into the future, even unto the end of the life of Plaintiff;
3. Pain and suffering and mental anguish occurring in the past and continuing, in reasonable probability into the future;
4. Reasonable and necessary medical expenses occurring in the past and continuing, in reasonable probability into the future; and
5. Other resulting damages, including diminution in value, loss of use, and property damage for which sums the Defendants are liable therefore.

**VII.**

The total of Plaintiff's actual damages exceeds the minimum jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$200,000.00, but not more than \$1,000,000.00.

**VIII.**

As an additional element of damages, Plaintiff herein seeks to recover pre-judgment interest at the highest legal rate allowed by law.

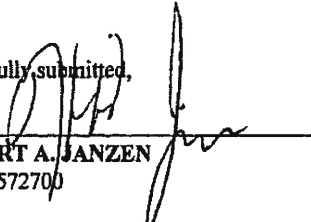
**IX.**

**C-6423-14-G**

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives actual notice to all parties herein that any and all documents produced may be used against the party producing the documents at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff respectfully requests and prays that the Defendants be cited to appear and answer herein and that upon final trial Plaintiff have judgment of and against the Defendants, both jointly and severally, for his injuries and damages, together with costs of suit, pre-judgment interest, post-judgment interest, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

By:   
**HERBERT A. JANZEN**  
SBN: 10572700

LAW OFFICES OF HERBERT A. JANZEN  
2000 Smith Street  
Houston, Texas 77002  
Phone: (713) 683-1599  
Facsimile: (713) 683-1588  
herbjanzen.office@yahoo.com

ATTORNEY FOR PLAINTIFF